

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 06-365 (RHK/RLE)

Plaintiff,

ORDER

v.

Todd Edward Hammond,

Defendants.

Before the Court is Defendant's Motion to Vacate Sentence. He was sentenced to 360 months in prison. He appealed that sentence, and subsequently filed a motion to dismiss the appeal, which was granted. Following the dismissal of his appeal, the court amended the judgment so as to run his federal sentence concurrently with a state sentence he was then serving. No appeal was taken from the amended judgment and the time for taking such an appeal has expired. Recognizing that he cannot appeal his sentence, he now moves the Court to vacate that sentence and then reimpose it; according to Defendant he would then be able to appeal the reimposed sentence.

Although the Court finds the proposal creative, it has found no legal support for it, and as the United States points out in its opposition to the Motion, "if Rule 4(b) could be circumvented so easily, it would cease to have the 'mandatory and jurisdictional' effect that the Eighth Circuit has previously determined it should have."

Based upon all the files, records and proceedings herein, the Motion to Vacate Sentence (Doc. No. 65) is **DENIED**.

Dated: July 15, 2008

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge